

August 26, 2011

To: Executive Board

Subject: **Federal Fiscal Year 2010-2012 Disadvantaged Business Enterprise (DBE) Program Goal**

Recommendations

1. Adopt a revised goal of six percent DBE participation for Foothill Transit's federally funded capital projects wholly utilizing race-neutral means for Federal Fiscal Years (FFY) 2010 – 2012; and
2. Authorize issuance of a public notice as required under 49 Code of Federal Regulations (CFR) Part 26 of the Department of Transportation (DOT) DBE rule, informing the public of Foothill Transit's DBE goal.

Analysis

DOT regulations require that each public entity receiving DOT funding establish an overall DBE goal every three years. At the July 2009 meeting, the Executive Board authorized the establishment of a DBE goal of 9.65 percent, complying with the rules established by the Federal Transit Administration (FTA) on January 28, 2011. Public notification was made of this action through classified ads placed in the San Gabriel Valley Tribune, the Inland Valley Daily Bulletin, La Opinion, and the Los Angeles Times.

After review of Foothill Transit's goal-setting methodology, FTA determined that the goal setting methodology was incomplete. The FTA conditionally approved the program for fiscal years 2010 -2012.

Under advisement from the FTA, Foothill Transit modified the goal setting methodology and determined that the goal for federal fiscal years 2010-2012 is six percent. The revised methodology includes utilizing data of available firms to provide services utilizing the 2009 Census Data on County Business Patterns for Los Angeles County and the California Unified Certification Program (UCP). The UCP provides access to all registered Disadvantaged Business Enterprises from throughout the state. Both of these sources support analyzing data utilizing the North American Industry Classification System (NAICS) to match the types of industries that will be used for the federally funded projects.

There were no changes to the projects nor the funding projects utilized to set the goal approved by the Executive Board at the July 2009 meeting.

As provided for in the federal regulations, Foothill Transit's DBE program would only apply to its DOT-assisted projects with the exception of bus purchases. Applicable state and local requirements and regulations related to affirmative action, as modified by the California Civil Rights Initiative (Proposition 209), apply to an organization's state and local contract projects, but not to its DOT-assisted projects. Proposition 209 prohibits

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the granting of preferential treatment in public contracting based on an individual's or firm's race, sex, color, ethnicity or national origin.

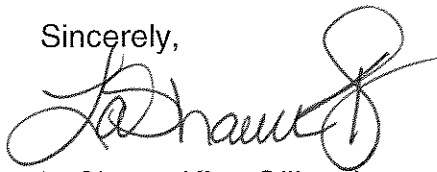
On May 1, 2006 the California Department of Transportation ordered a change in the administration of DBE participation, implementing a DBE race-neutral program. The action came as a result of a Ninth Circuit Court of Appeals decision mandating that evidence of discrimination in the transportation contracting industry must be documented in order to implement a DBE race-conscious program. The race-neutral DBE Program may be an interim step, pending the results of an availability and a disparity study to guide the administration of the DBE Program in accordance with 49 CFR Part 26.

Foothill Transit will continue to conduct and enhance its outreach to small businesses, certified and prospective DBE vendors, and expects to meet its annual goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes occasions where a DBE is awarded a prime contract through customary competitive procurement procedures; when DBE participation is awarded a subcontract on a prime contract that does not have a DBE goal, and when DBE participation on a prime contract exceeds a contract goal.

Fiscal Impact

There are some minor costs related to advertising the revised goal, contracting opportunities and the enhanced outreach to both DBE and non DBE vendors. These expenses were included in the Fiscal Year 2012 budget.

Sincerely,



LaShawn King Gillespie
Director of Planning



Doran J. Barnes
Executive Director